

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Insurance Agent
License of Vernon D. Haakenson,
License No. 20001693

FINDINGS OF FACT, CONCLUSIONS,
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on October 10, 1995, at 9:00 a.m. in the offices of the Department of Commerce in St. Paul, Minnesota. The record closed on October 17, 1995, upon receipt of the hearing transcript. An oral ruling was issued regarding this matter on October 30, 1995.

Philip H.M. Grove and Elizabeth M. Richter, Assistant Attorneys General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce. Michael A. Hatch and Lori R. Swanson, Attorneys at Law, Hatch, Eiden & Philstrom, One Financial Plaza, Suite 950, 120 South Sixth Street, Minneapolis, Minnesota 55402, appeared on behalf of the Respondent, Vernon D. Haakenson.

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record which may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact James E. Ulland, Commissioner, Department of Commerce, 133 East Seventh Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues in this contested case proceeding are whether the Respondent's resident insurance agent license became void during 1994 because he was not a resident of Minnesota or did not maintain his principal place of business in Minnesota, whether the Respondent thereby violated the provisions of Minn. Stat. §§ 60A.02, subd. 7, 60K.02, 72A.19, and 72A.20, subd. 18(b) (1994), by acting as an insurance agent in Minnesota without being licensed, and whether the Commissioner should vacate or make permanent the Cease and Desist Order issued to the Respondent.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent, Vernon D. Haakenson, was a licensed insurance agent in North Dakota until 1990, when his license in that state was revoked. Although he has had licenses in other states, those licenses expired prior to 1994. The only state in which the Respondent is currently licensed is Minnesota. T. 20-21.

2. The Respondent currently resides at 3626 Fairway Road in Fargo, North Dakota. T. 16, 21. He has owned that home since 1973. T. 22.

3. Between approximately January 1, 1993, and December 1, 1993, the Respondent visited his son, Scott Haakenson, and stayed overnight in his son's two-bedroom apartment located at 2240 South Plymouth Road in Minnetonka, Minnesota (hereinafter referred to as "the Minnetonka apartment"). The Respondent had his own room and kept some articles of clothing there. In the beginning of this time period, the Respondent stayed overnight with his son a couple of times a month. As the year went on, particularly in the fall of 1993, the Respondent began to stay with his son more and more often. T. 31-32, 124, 127.

4. The Respondent decided to move to Minnesota in approximately December of 1993 because he was experiencing numerous personal and business problems and stresses. He had suffered a heart attack in October of 1993, had just completed radiation treatment for prostate cancer, was unemployed, and was trying to work out problems in his marriage. T. 56, 232-33.

5. After coming to Minnesota, the Respondent kept some personal belongings (primarily clothing) in his Fargo home. T. 56-57. His wife continued to reside in the Fargo home. T. 54.

6. From approximately December of 1993 until September of 1994, the Respondent generally lived in Minnesota during most of the business week (Monday through Friday). T. 225-26, 38, 229-30. Between December of 1993, and March of 1994, he lived with a family friend, Julie Tweedt, in a condominium located in Bloomington and occasionally stayed with his son in the Minnetonka apartment. Beginning in April, 1994, he lived in a townhouse owned by Ms. Tweedt which was located at 1600 Geske Road in Chaska, Minnesota (hereinafter referred to as "the Chaska townhouse") and also continued to stay with his son in the Minnetonka apartment on occasion. T. 22-24, 35, 38-39, 129, 222-26. Ms. Tweedt had stayed with the Respondent and his family in Fargo for six months during college, and she did not require the Respondent to pay rent. T. 229-30. The Respondent frequently visited his wife in Fargo on weekends or met her at her lake home located in Pelican Rapids, Minnesota, although he sometimes stayed in the Twin Cities during weekends. T. 26-28, 226.

7. The Respondent had keys to both the Bloomington condo and the Chaska townhouse. T. 226-27. The Respondent furnished a room at the Chaska townhouse, kept personal property there, and received mail there. T. 31-32, 226-28.

8. The Respondent applied for a Minnesota resident insurance agent license in the spring of 1994. The Respondent gave the Minnetonka apartment as his street address when he completed his application form on March 1, 1994. T. 140, 150; Ex. 1.

9. In a letter of reference dated February 21, 1994, which the Respondent supplied with his insurance application, Donald Johnson indicated that the Respondent had been coming to a Bible study he conducts in his Fargo office on Thursday mornings during the past 2-1/2 years. T. 144-45; Ex. 1. Another letter of reference from Pastor Kent McKinnon dated February 25, 1994, stated that the Respondent attended church and adult Sunday School in his church located in West Fargo on a regular basis and also attended a Bible study class on Monday nights. T. 146; Ex. 1. However, the Respondent has in fact attended Monday night Bible study both in West Fargo and at Normandale Lutheran Church in Minneapolis. T. 147.

10. The Respondent became licensed as a resident insurance agent on May 10, 1994. T. 176.

11. Diversified Brokerage Services, Inc. ("DBS") is a general agent that represents twenty life insurance companies. DBS is a general agent for two companies to which the Respondent has an appointment: Federal Kemper Life Insurance Company and the North American Company for Life and Health in Chicago. T. 72, 75, 103, 121, 179-80. George Van Dusen is the President, Chief Executive Officer, and stock owner of DBS. T. 72, 103. The Respondent has known Mr. Van Dusen on both business and personal levels for many years. T. 81, 94, 96, 102-03.

12. From December of 1993 to the end of September of 1994, the Respondent rented an office located at 2401 West 66th Street in Richfield, Minnesota, (hereinafter referred to as "the Richfield office") from Van Dusen Properties. T. 79-80, 94, 180. Van Dusen Properties is owned by George Van Dusen, who owns the Richfield office building personally. T. 80, 94. The office rented by the Respondent was a private office with its own lock and private telephone. He also had access to other offices, a conference room, fax machines, and copy machines. The Respondent provided a computer (which belonged to his son) and office supplies. T. 79-80, 246. The rent was \$185 per month. The Respondent was able to pay this rent for three months. After that, the Respondent and Mr. Van Dusen agreed that the Respondent did not have to pay rent until his insurance business built up to a point where the Respondent could afford to pay. The Respondent never reached that position. T. 82, 95-96.

13. DBS makes extensive use of computers in maintaining policyholder data. This information is freely available to agents. Agents frequently call the DBS office when they are away from the office to find out relevant information contained in the computer files. T. 111-12. In addition, the forms needed are maintained on computer and can be completed, printed, and mailed by DBS staff based upon information supplied over the telephone by the agent. T. 120. Thus, agents servicing policyholders or transacting business through DBS' office would not necessarily have to carry with them or have access to a paper file on the policyholder. T. 113, 120.

14. Between December 1993 and the fall of 1994, the Respondent received mail at his Fargo home, a Fargo post office box, and the Richfield office. T. 41-44, 97. He primarily received business mail at the Minnetonka apartment and the DBS office. T. 44-45. During this time period, the Respondent checked the Fargo post office box approximately once a week, and his wife checked it approximately two times a week. T. 53-54.

15. Respondent had major cancer surgery in June 1994 and decided within a few months thereafter to reestablish his residency in Fargo. His wife did not want to move to the Twin Cities area with him. He also had grandchildren living in the Fargo area. T. 61. The Respondent began living primarily in his home in Fargo at some time between August 15 and October 15, 1994. T. 24, 224.

16. After the end of September 1994, the Respondent stopped renting a private office in Richfield. T. 84, 94. Mr. Van Dusen found someone else who was interested in renting the office. T. 84, 85, 96.

17. Although the Respondent no longer had a private office in Richfield after the end of September 1994, Mr. Van Dusen makes the full use of the Richfield facilities available to the Respondent on a non-rent basis whenever he needs it, due to their close relationship. The Respondent can also utilize all of DBS' facilities, including a conference room, a training room, an agent's room, telephones available in these rooms, computers, copying machine, and fax machine. DBS staff assistants provide him with sales materials, customized print-outs, and correspondence. T. 71-72, 94-95. While there is no direct charge to the Respondent for these services, he pays indirectly for these services since DBS receives compensation for any business he produces. T. 72, 78, 95, 110.

18. The Respondent has used the Richfield facilities on an as-needed basis since October of 1994. He has used the conference room to meet with prospective policyholders who wanted to meet there rather than at their home or business. It is convenient because he can simply show up and space is available for him. T. 184-85.

19. The Respondent gave the Richfield address as his business address on the application for insurance license renewal he filed in October, 1994. He identified the Fargo address as his "new residence address" at that time. Exs. 11, 24.

20. From October 1994 to March 1995, the Respondent went to the Richfield office approximately once every week or ten days. T. 85, 99, 109-110, 116. During that time, the Respondent began to pull back from marketing a large amount of business in the Twin Cities area and began to plan for opening an office in the Fargo-Moorhead area. T. 186.

21. The Respondent has rented an office in Moorhead located at 1001 Center Avenue, Suite D, since March 1995. He uses that office primarily for insurance sales. He has office equipment and a business telephone there. He was unable to estimate at the hearing the frequency with which he has gone to the Moorhead office since March 1995. T. 62-67, 186. The Respondent continues to visit policyholders in their homes or businesses or in restaurants. T. 243. Although the Respondent sent a letter to the Department of Commerce notifying it of his new address, the Department has no record

of having received the letter. T. 163, 216; Ex. 23. The Respondent has sold insurance policies while working out of the Moorhead office. T. 75. DBS has generally been involved as the general agent in the business conducted by the Respondent out of his office in Moorhead. T. 75-76.

22. During the time period of August 1994 through March 1995, ninety percent of the Respondent's activity was directed at attempting to sell policies for either Federal Kemper Life or North America Company for Life and Health of Chicago, two of the insurance companies with which DBS has general agent contracts. T. 200. Since late May or early June of 1994, the Respondent has made seven sales of insurance policies for these companies and has submitted another five cases that were not placed. T. 99-100. The Respondent sold some policies for these companies in the time frame following October 1, 1994. T. 99-100. At least some of the individuals to whom the Respondent sold insurance policies lived in the Twin Cities metropolitan area. T. 84.

23. Since July 11, 1994, the Respondent has sold four policies for Federal Kemper. The Respondent has not sold any policies for North America Company for Life and Health Insurance since his appointment on June 29, 1994, and his appointment was canceled on February 1, 1995. T. 202-04; Ex. 25. The Respondent has sold two annuities with Equitable Life Insurance Company of Iowa since September 28, 1994, because the annuity rate was higher than anything DBS companies offered. T. 194-96, 202-04; Ex. 25. He was appointed with Unum on June 24, 1994, but has not sold any disability policies through that company. T. 197-98, 202-04; Ex. 25. He was appointed with Connecticut Mutual Life Insurance Company and CM Life on February 22, 1994, but has never sold any policies through them. T. 198-99, 202-04; Ex. 25.

24. It was determined in May of 1995 that the Respondent's cancer has metastasized. The Respondent's health has adversely affected his ability to sell insurance. T. 234.

25. Because insurance agents must spend a significant amount of their time calling on prospective clients, a typical insurance agent spends only approximately 1 to 1-1/2 days in an office environment each week T. 97-98. When soliciting business, insurance agents generally go where the customer is, and meet with them in their home or workplace, not in the agent's office. T. 108. As a general matter, insurance agents will obtain one or two appointments from every ten cold calls they make and will make one or two sales from every five appointments. T. 113-14.

26. When the Respondent solicits insurance business in Minnesota, he generally goes to a Minnesota town and uses telephones in banks to call the names of people he locates or whose names he has been given. He also calls DBS' offices frequently from Minnesota locations, sometimes as often as six times a day, for information regarding policy owners, beneficiaries, cash values, and conversion questions. T. 91-92, 183-84, 188-89, 191. The availability of the DBS computer system has lessened his need to bring specific policyholder files to meetings. T. 190-91. He usually meets with people in their home or business place or at a restaurant over lunch or coffee. T. 178. In the Respondent's experience, it generally takes two or three appointments with an individual before they will buy insurance. T. 179. He usually travels to the vicinity if he has appointments or a list of prospects in a particular location

and schedules as many appointments as he can to fill the day. While traveling in Minnesota, he has used his cellular phone to call insureds or prospective policyholders from his car. If clients keep him waiting, as is frequently the case, he tries to establish friendships with others in the area while he is waiting. T. 180-83.

27. Most of the Respondent's insurance business is done out of his briefcase. T.66. Although he has an office in the basement of his Fargo home, he doesn't conduct insurance business out of his home. He has not seen any policyholders or prospective policyholders at his home in North Dakota. T. 66-68, 236.

28. The Respondent continues to receive mail at the DBS office, including past due notices on premiums that were not paid in a timely manner and first year and residual commission checks. T. 76-77, 97, 114-15, 186-87.

29. The Respondent considers his business offices to be the Richfield and Moorhead offices. He has not had any other business offices since March 1995. T. 78. The Respondent considers his primary place of business to be the Richfield office. T. 71, 85, 172-73, 235; Ex. 24.

30. In letters written in November of 1993 and April, May, August, and September of 1994, the Respondent gave his Fargo address as his return address. T. 149-151; Ex. 2-6. The Respondent's checking account statement for February 25, 1994 through March 24, 1994, was sent to his Fargo address. T. 158-59; Ex. 7. Applications for an annuity and life insurance policies sold by the Respondent listed a phone number for his Fargo home next to the Respondent's name. T. 159-62; Exs. 8, 10.

31. The Respondent has never applied for a Minnesota driver's license or registered to vote in Minnesota T. 29. He did have a Minnesota telephone listing at his wife's lake home and also used a cellular telephone while in Minnesota. T. 30.

32. The Respondent has not filed any income tax returns in Minnesota since December 1993 and does not believe that it is necessary to file due to the reciprocity agreement with bordering states. T. 136-38.

33. The Respondent pleaded guilty to a criminal felony in 1992 which involved one count of fraud. He was placed on probation for three years and was assessed a \$30,000 fine. T. 174.

CONCLUSIONS

1. The Commissioner of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 45.027, subd. 5, and 14.50 (1994).

2. The Department of Commerce has given proper notice of the hearing in this matter and has otherwise fulfilled all relevant substantive and procedural requirements of law or rule.

3. The Respondent was issued a Minnesota resident insurance license effective May 10, 1994.

4. Pursuant to Minn. Stat. § 60K.03, subd. 2(a) (1994), a person may hold a resident insurance license in Minnesota only if the person is a resident of Minnesota, the person's principal place of business is maintained in Minnesota, or the person is a resident of a community or trade area, the border of which is contiguous with the state line of Minnesota, and the person holds a resident license from the contiguous state.

5. The Department bears the burden to show by a preponderance of the evidence that the Respondent's resident insurance agent license became void by virtue of his lack of residency in the state or his failure to maintain a principal place of business in the state.

6. The Department has not demonstrated by the preponderance of the evidence that the Respondent's resident insurance agent license became void. The evidence showed that the Respondent resided in Minnesota until some point between August 15 and October 15, 1994, and that the Respondent has maintained his principal place of business in Minnesota since receiving his Minnesota insurance license.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner vacate the Cease and Desist Order issued on September 26, 1995.

Dated this _____ day of November, 1995.

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Transcript prepared by Gail M. Hinrichs, Court Reporter
Kirby A. Kennedy & Associates (1 volume)

MEMORANDUM

The Department argues that the Respondent's insurance license became void if, any time, he had neither his personal residence nor his principal place of business in Minnesota. This appears to be an accurate interpretation of the statute, which provides in pertinent part as follows:

The commissioner shall issue a resident insurance agent's license to a qualified resident of this state as follows:

(a) A person may qualify as a resident of this state if that person resides in this state or the principal place of business of that person is maintained in this state. Application for a license claiming residency in this state for licensing purposes constitutes an election of residency in this state. A license issued upon an application claiming residence in this state is void if the licensee, while holding a resident license in this state, also holds, or makes application for, a resident license in, or thereafter claims to be a resident of, any other state or jurisdiction or if the licensee ceases to be a resident of this state; provided, however, if the applicant is a resident of a community or trade area, the border of which is contiguous with the state line of this state, the applicant may qualify for a resident license in this state and at the same time hold a resident license from the contiguous state.

Minn. Stat. § 60K.03, subd. 2(a) (1994).

The statute does not define what is necessary to meet the requirement of “residing” in the state. In the absence of a statutory definition, the term should be construed in accordance with its ordinary meaning. Minn. Stat. § 645.08(1) (1994). “Reside” is defined in New Webster’s Dictionary and Thesaurus at 847 (1991) to mean “to have one’s home in a particular place for a considerable length of time.” The term is defined in Black’s Law Dictionary at 1473 (rev. 4th ed. 1968) to mean “live, dwell, abide, sojourn, stay, remain lodge.” The term “residence” is defined in Black’s Law Dictionary as “[a] factual place of abode. Living in a particular locality. . . . It requires only bodily presence as an inhabitant of a place.” *Id.* The term “residence” has been contrasted with “domicile,” which generally requires bodily presence combined with an intention to make the location one’s fixed and permanent home. See 29 C.J.S. Domicile, §§ 1-2 (1941).

It appears, based upon the evidence presented at the hearing, that the Respondent resided in Minnesota from approximately December, 1993, until sometime between August 15, 1994, and October 15, 1994. Although the Respondent continued to use his Fargo address and telephone number for some purposes and may have spent some time during the early months of 1994 attending Bible study in the Fargo area, the Judge is persuaded that the Respondent generally spent four to five days of each week in the Twin Cities area from at least March of 1994 through August 15-October 15, 1994, as well as occasional weekends.^[1] He thus resided in Minnesota at the time he applied for and received his Minnesota resident insurance agent license and for several months thereafter. Moreover, pursuant to Minn. Stat. § 60K.03, subd. 2(a) (1994), his application for a resident license claiming residency in Minnesota constitutes an election to become a Minnesota resident.^[2]

The Respondent admitted that he moved back to Fargo at some point between August 15 and October 15, 1994, and did not demonstrate that he has spent more than one day out of every week or ten days in Minnesota since that time. The Administrative Law Judge thus agrees with the Department’s contention that the Respondent has not,

since at least October 15, 1994, maintained a sufficient physical presence in Minnesota to be deemed to have resided in the state. Accordingly, it is necessary to consider whether the Respondent maintained his principal place of business in Minnesota after his return to Fargo in order to determine whether his resident license became void at that time.

The Department argues that the Respondent has not had a principal place of business in Minnesota since October 15, 1994. In this regard, the Department apparently contends that the Respondent cannot claim that the Richfield office was his principal place of business after he ceased leasing space there and/or that the Respondent's use of the Richfield office on an infrequent basis (once every week or ten days) after October 1 is not sufficient to render that location his principal place of business. The Department also asserts that the Respondent's Moorhead office cannot be considered the Respondent's principal place of business because he seldom uses that office. Accordingly, the Department contends that the Respondent's insurance license became void after October 15, 1994, and that action he has taken as a insurance agent since then is unlicensed activity in violation of the insurance laws.

Because the term "principal place of business" is not defined in the statute, it is once again necessary to construe the phrase in a manner consistent with its ordinary meaning. Minn. Stat. § 645.08(1) (1994). The term "principal" is defined in the New Webster's Dictionary and Thesaurus at 795 as "first in importance." It is defined in Black's Law Dictionary at 1355 as "[c]hief; leading; most important or considerable; primary; original. Highest in rank, authority, character, importance, or degree." As the Respondent pointed out, it is also necessary and appropriate to examine the typical business practices of life insurance agents in determining whether Mr. Haakenson maintained a principal place of business in Minnesota. Mr. Haakenson and Mr. Van Dusen both testified that life insurance agents rarely spend much time in the office and that it is necessary for them to meet with policyholders and prospective clients in other locations, such as a restaurant or the customer's home or place of business. The Respondent gave undisputed testimony that he exclusively met clients and prospective clients in Minnesota and that he did not meet anyone in North Dakota at any time.

Bearing these considerations in mind, the Administrative Law Judge has determined that the Respondent did, in fact, maintain his principal place of business in Richfield, Minnesota between May of 1994, when he received his license, and the date of the hearing in this matter. Although the Respondent has not formally leased the Richfield office since September of 1994, he continues to receive mail and commissions there, telephones DBS' offices in order to retrieve relevant insurance information from its computer system, meets with clients there on occasion, and uses the office on an as-needed basis. Even though the Respondent is not physically present in the Richfield office on a frequent basis, that fact does not prevent the Richfield office from being his principal place of business in light of the ordinary business practices of life insurance agents and the evolving use of computer information resources in the insurance industry in general and DBS companies in particular. The Department did not refute the Respondent's testimony that he has been soliciting sales of insurance in Minnesota during the time period since his licensure or show that he has seen clients in his Fargo home or solicited clients who are not residents of Minnesota. Although the Respondent

has not sold very many policies since he received his Minnesota license, that fact is understandable given the health problems he has been experiencing and is irrelevant in considering the location of his principal place of business. The number of policies sold also does not reflect the Respondent's unsuccessful attempts to solicit business.

It is evident that the Respondent did not respond in an entirely straightforward or truthful fashion to questions that were asked of him during a deposition taken on August 29, 1994, in another matter in which an attorney sought to discover information relating to his assets and residency and the location of his office,. See Ex. 18. At various points during the deposition, the Respondent stated that he did not have an office in Minnesota; he had an office that he was using; he was in the process of moving his office; he was just temporarily utilizing office space that he had used off and on during the past six months; he didn't remember the telephone number or office address; and he did not have a temporary or permanent office in Minnesota. Id. at 5-8. The Respondent's testimony in the present matter was vague in some respects and he does not have a detailed memory of dates. He was, however, more straightforward in his hearing testimony on the whole in the present case than he was in the earlier deposition. Moreover, his testimony in the present matter regarding his residence and office locations was corroborated by other witnesses (Mr. Van Dusen and Ms. Tweedt). Although these witnesses are friends of the Respondent, they provided open and direct responses to the questions posed to them, had good memories of the dates and other matters at issue in this case, and were found by the Administrative Law Judge to be entirely credible witnesses.

Accordingly, the Administrative Law Judge recommends that the Cease and Desist Order be vacated.

B.L.N.

^[1] The Respondent thus maintained a place of abode in Minnesota and spent more than one-half of his time living in Minnesota during the months in question. Such a presence in the state would be sufficient to render an individual a resident of the state pursuant to rules promulgated by the Minnesota Department of Revenue. See Minn. Rules pt. 8001.0300, subp. 1 (1993).

^[2] Even if this had not been the case, the statute permits a person residing in a community which is contiguous with the Minnesota border to obtain a resident license in Minnesota even if he or she has a resident license in the other state. Minn. Stat. § 60K.03, subd. 2(a) (1994). This provision expresses a clear intent to permit residents of communities such as Fargo to obtain resident licenses in Minnesota.